UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1109
10 August 1995

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1109th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 7 August 1995, at 10 a.m.

Chairman: Mr. GARVALOV

later: Mr. SHERIFIS

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Eighth periodic report of El Salvador (continued)

* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1109/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.95-18201 (E)

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eighth periodic report of El Salvador (CERD/C/258/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Mendoza, Mr. Guerrero, Miss Escobar, Mrs. Alvarado-Overdiek and Miss Chavez (El Salvador) resumed their seats at the Committee table.

2. The CHAIRMAN invited further comments and questions from members of the Committee on the eighth periodic report of El Salvador.

3. Mr. YUTZIS said he regretted that he had been unable to attend the previous meeting, during which the delegation of El Salvador had delivered its introductory statement, since he bore special responsibilities with regard to that country. Following a two-week mission to El Salvador earlier that year, he could attest to the fact that the process of democratization and reconstruction there was well under way. Moreover, there seemed to be the political will to remove certain restrictions that for many years had given rise to concern. Of course, many of the problems encountered by the present Government stemmed from the civil war and its aftermath and would be resolved in time. In that connection, he welcomed the contribution of the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights. Many of the areas in which efforts had been launched were of relevance to the Convention. They included: consolidation of the parliamentary process and judicial institutions; transfer of power from military to civil police; new and amended legislation on juvenile offenders and minors in the family. Of particular interest to the Committee was the role of the Procurator for the Protection of Human Rights, who among other things would be responsible for minorities, including the indigenous population. On the basis of his findings, he was confident that the action being taken in El Salvador by a wide range of organizations was productive, and augured well for the future of the country and of the region as a whole.

4. Mr. SHAHI observed that El Salvador's human rights record had improved greatly since the signing of the peace accords in 1992, but stressed the need for more detailed information on their implementation, which would guarantee the enjoyment of human rights for Salvadoran citizens. It was regrettable that neither the report (CERD/C/258/Add.1) nor the introductory statement by the Salvadoran delegation had provided a satisfactory explanation of how El Salvador was fulfilling its obligations under articles 2 to 7 of the Convention. In fact, the report had not been drafted in accordance with the guidelines on the subject. Moreover, comments along the lines of those contained in paragraph 60 reflected the Salvadoran Government's view that information on the demographic situation was unnecessary, since the nation was racially homogeneous. Yet the Country Rapporteur had provided information from other sources pointing to the existence of a sizeable indigenous population in the country back in the 1930s. Surely their descendants must still be living in the same areas or in scattered rural communities? More information on the activities of the National Human Rights Commission would also be welcome. He hoped that those aspects would be taken into account in

subsequent periodic reports and, more importantly, that the widely differing views of the Committee and the Government of El Salvador regarding its obligations under the Convention could be reconciled.

5. Mr. SHERIFIS, while welcoming the opportunity to resume the dialogue with El Salvador, said that the single report submitted - in lieu of six periodic reports - hardly made for a satisfactory exchange of views. Although the special circumstances of El Salvador must be taken into account, they did not signify that the reporting obligations spelled out in article 9 of the Convention could be disregarded. Over and above the exhaustive comments made by the Country Rapporteur and other speakers, he expressed particular appreciation to Mr. Yutzis for his appraisal of the situation in El Salvador.

6. He joined previous speakers in emphasizing the Committee's total disagreement with the stance adopted by the Government of El Salvador in paragraph 60 of the report and urged it to reconsider its interpretation of the Convention. The members of the Committee, and the relevant staff of the Centre for Human Rights were at the disposal of the delegation for further advice on the matter. Since El Salvador claimed that it had no problems with its ethnic population, it might wish to consider making a declaration under article 14 of the Convention. And the Government might be requested to endorse the amendment adopted by the General Assembly concerning funding for the Committee. He looked forward to a more frequent dialogue with El Salvador in future, based on reports drafted in accordance with the relevant guidelines. They should provide more substantive information regarding compliance with the provisions of the Convention in order to bear out the statement made in paragraph 60 of the report.

7. Mr. ABOUL-NASR said that a proper analysis of the current situation in El Salvador was being hampered by the absence of information on the indigenous population. He failed to understand why such information could not be made available. Perhaps the Government did not compile statistics with a specific breakdown according to race, but surely it must have an approximate idea of the current numbers of indigenous people. Otherwise how could it establish that indigenous people constituted the poorest sector of the population and make provision to improve their standard of living? He would also welcome more detailed information on Mr. Yutzis' recent mission to El Salvador; there seemed to be no reference to it in the documentation available. Had he drafted a report of his findings? Lastly, he did not endorse the approach favoured by other Committee members, namely, to invite delegations to make a declaration under article 14 of the Convention. In his view, it was an optional clause, and he presumed that States parties had given the matter due consideration. It was significant that the majority of States parties had not thus far made such a declaration.

8. Mr. MENDOZA (El Salvador) said that his Government attached the highest importance to dialogue with the Committee, which had regrettably been interrupted for a number of years. In his introductory statement he had given an account of the special circumstances which had made it impossible for his Government to comply with its reporting obligations under the Convention during the civil war and immediate post-war period when priority had been accorded to all aspects of the peace negotiation process. As soon as practicable his Government had turned its attention to international treaty

obligations, starting with the Convention, and had submitted its periodic report. It should be noted that the previous periodic report submitted had been based on the Constitution of 1962, the new Constitution having been adopted shortly after its dispatch to the Committee in 1983. That Constitution, which was still in force, contained a specific article providing protection against discrimination on racial and religious grounds. More recently, the Government had been making considerable efforts to adopt international instruments which would lay the foundations for a society in which basic human rights and freedoms were guaranteed, as borne out by the ratification of the ILO Convention of 1958 concerning Discrimination in respect of Employment and Occupation (No. 111).

9. As a result of the conflict in El Salvador, some 200,000 persons had left the country and sought refuge in Honduras, Nicaragua, Costa Rica and Panama, and parts of Mexico. Under the voluntary repatriation plan, all had since returned to El Salvador and the repatriation process had been recognized as successful by UNHCR. There were, therefore, no longer any Salvadoran refugees but there were some 500,000 persons who had been internally displaced as a result of the conflict. The plan to resettle them undoubtedly had implications for the indigenous population.

10. The statement in the report that El Salvador had no significant population groups with characteristics clearly distinguishing them from the population as a whole required an explanation, given the fact that, historically, Central America was very rich in indigenous populations. There was a methodological difficulty, however, in assessing the particular situation of the indigenous population in El Salvador owing to the fact that it was not immediately visible. The characteristics used in other parts of the world to identify ethnic groups, such as special clothing, religious traditions or the use of native languages, were not seen in El Salvador. It had been pointed out that the population census carried out in 1930 had indicated the existence of an indigenous population and it had been asked what had become of them. There were both historical and economic explanations for the intensive process of assimilation that had taken place in El Salvador from the beginning of the Spanish conquest to the present day. The recent conflict had completed the process of the scattering of indigenous communities and as a result it was almost impossible to trace the indigenous population, which had become, as it were, invisible. It was noteworthy that the publication, "The Indigenous World, 1994-1995", when referring to the indigenous populations of Central America, spoke of Guatemala, Honduras, Nicaragua, Costa Rica and Panama but made no mention of El Salvador.

11. The Government was aware that an indigenous population existed, despite the difficulty of locating and counting it, and it was making a concerted effort, through the Ministry of Education and the National Cultural Commission, to preserve the indigenous cultural heritage and spoken languages. The end of the conflict in El Salvador meant that more attention could be given to studying what was sometimes called the process of transculturation and finding a method whereby indigenous ethnic characteristics could be preserved and the indigenous population guaranteed the rights and prerogatives to which they were entitled. It was hoped that, after the next census, it would be possible to provide the Committee with figures for the number of people with indigenous characteristics, once an appropriate method of

identification had been worked out, perhaps with expert advice from the Centre for Human Rights. He stressed his Government's readiness to carry out its responsibilities to the Committee and to provide the information requested in a supplementary report to be submitted in 1996. El Salvador was determined to fulfil all its obligations to the human rights bodies.

12. Mr. GUERRERO (El Salvador) said that the special process of assimilation and acculturation in El Salvador explained, but might not excuse, the form of the eighth periodic report and the decision not to include information on the implementation of articles 2 to 7 of the Convention. His Government had undertaken to provide the information and documentation requested by the members of the Committee in a supplementary report, to be submitted in 1996.

13. Concern had been expressed by one member of the Committee regarding the conclusion of the work of UNOSAL in El Salvador and the effects of the peace settlement on Salvadoran society. The decision of the Security Council to end the mandate of UNOSAL reflected a general belief that the peace process had become irreversible and that it now rested with the Government and people of El Salvador to rebuild the country's institutions and instal the bodies created by the peace agreements. In that connection, he was happy to report the recent appointment, as Procurator for the Protection of Human Rights, of Mrs. Victoria Marina Velásquez de Aviles, a well-known expert in human rights. Her Office, as part of the Department of Public Prosecutions, enjoyed full powers to promote and protect human rights as set out in article 194 of the Constitution and in the enabling legislation. For the past eight months, it had been carrying out the task of receiving complaints of human rights violations formerly performed by UNOSAL. The secondary legislation was being kept under constant review, to ensure that the Office became an increasingly useful and generally accepted instrument for protecting the human rights of all Salvadorans. The Office was a member of the Central American Commission of Offices of Procurators for the Protection of Human Rights, through which procurators in Central America sought to join forces in trying to ensure the effective promotion of human rights. The Office also had a working relationship with the Human Rights Commission of the Salvadoran Legislative Assembly.

14. Questions had been asked regarding public security in El Salvador, in particular the functioning of the National Civil Police Force. On 1 June 1995, a new Ministry of Public Security had been established, endowed with additional financial and human resources. With regard to the training received by the police, 25 classes had already graduated from the new Public Security Academy, the aim being to have 20,000 civil police officers by the end of 1996. It was hoped that, by the end of August 1995, new disciplinary regulations for the National Civil Police would have been approved. The Legislative Assembly was currently studying a Police Career Bill. With regard to the irregular situations in which Civil Police officers had been involved, referred to by a number of members of the Committee, action had been taken to speed up the investigation of 117 cases of serious offences and new members of the Civil Police Disciplinary Tribunal were about to be appointed.

15. In connection with the administration of justice and the presumed participation of certain judges in wrongful acts in the past, the Supreme Court's Department of Judicial Investigations had notified 20 judges of charges made against them in the report of the National Council of the Judiciary. The Supreme Court was working with the utmost speed and vigour to analyse all cases in which judges had been accused of offences. In addition, a Special Commissioner of the Supreme Court had recently been appointed to consider cases of corruption among members of the public administration; in that connection the Supreme Court had just completed a year's work which had achieved very satisfactory results. Another important achievement with regard to the administration of justice was general acceptance of the need for the Supreme Court, as guarantor of the rule of law, to be completely apolitical.

16. It had been asked whether the offence of incitement to hatred of specific groups of persons, referred to in paragraph 56 of the report, still stood. The relevant provision of the Criminal Code, which dated from 1972, had not been altered. He had no information regarding the number of cases brought in that connection or the legal findings, but he would consult the courts and the information would be provided at a later date. Questions had also been asked about the position of foreigners in El Salvador. As the report made quite clear, foreigners enjoyed all the economic, social and cultural rights of Salvadorans but not political rights. He assured the Committee that the Government was aware of the need to inform the population fully of the protection of human rights afforded by the international conventions and by national legislation. Although no Salvadoran litigants had so far made use of international instruments, it was hoped that gradually that would change. The Supreme Court had already organized seminars for judges and lawyers to promote the utilization of international legislation and the provisions of the international instruments to which El Salvador was a party.

17. Mr. Sherifis took the Chair.

18. Mr. YUTZIS said that, at its most recent session, the Commission on Human Rights had adopted a resolution welcoming El Salvador's request for technical assistance and advice in the field of human rights. That action was related to a proposal to the Commission by the independent expert on El Salvador that an agreement regarding technical assistance on human rights matters should be negotiated between the Government of El Salvador and the Centre for Human Rights. As a preliminary to such an agreement, a mission had been appointed by the Centre's Technical Assistance Branch to verify needs in El Salvador. The mission had consisted of four members, two from the Centre and two independent experts, one of them himself. It had taken place at the end of May and beginning of June 1995. The Committee had not yet been informed of the mission's results because the information was still being analysed and processed by the Technical Assistance Branch.

19. In reply to the question raised by Mr. Aboul-Nasr, he said that the mission had contacted all the official State organs, NGOs and human rights bodies in El Salvador, in particular the Office of the Procurator for the Protection of Human Rights recently created under the peace agreement and currently responsible for many human rights questions in El Salvador. The mission had recommended a more exhaustive analysis of the implementation of all the human rights conventions signed by El Salvador. He agreed that the

report before the Committee did not fully describe the new conditions in El Salvador with regard to human rights and did not properly reopen the country's dialogue with the Committee. Demographic data, in particular, were lacking. He hoped that the Government would seriously consider the possibility of submitting a supplementary report, in not more than one year, based on responses to the Committee's questions. While the Government was under no formal obligation to do so, such action would constitute a useful gesture and greatly enhance the dialogue with the Committee.

20. Mr. SHAHI congratulated the delegation of El Salvador on its frank dialogue with the Committee. The request for advice on how to present information on the few indigenous people in El Salvador was extremely encouraging. It had been noted that a small minority of indigenous people continued to wear national dress and use their own language. Further details on such groups and, conversely, those that concealed their ethnic identity would be welcome. Additional information on the violation of the human rights of indigenous people should be included in El Salvador's ninth periodic report, in the light of the increase in the number of complaints lodged with the Office of the Procurator for the Protection of Human Rights from 2,071 in 1993 to 4,264 in 1994.

21. Mr. LECHUGA HEVIA drew attention to the discrepancy between the statement made by the delegation of El Salvador on the Government's efforts to identify the small indigenous groups known to be living in El Salvador and the assertion in paragraph 60 of the report (CERD/C/258/Add.1) that "In view of the fact that Salvadoran society does not have any problem of ethnic populations, the Government of El Salvador considers it irrelevant and unnecessary to refer to the operative part of the Convention." He asked why the Government had not tried to identify indigenous groups in the past and requested statistics on the number of indigenous inhabitants who had fallen victim to human rights violations at the hands of military and paramilitary groups. A full breakdown of the composition of the population would also be useful for the Committee.

22. Mr. FERRERO COSTA thanked the delegation of El Salvador for expressing the Government's willingness to engage in constructive dialogue with the Committee. However, as other members of the Committee had pointed out, the report of El Salvador (CERD/C/258/Add.1) contained no relevant information. Its next report should include comprehensive details of matters within the competence of the Committee, in accordance with the general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.3). El Salvador should be urged to submit its next report in 1996, but not necessarily in time for it to be considered at the Committee's next session.

23. Mr. BANTON, responding to the statement made by Mr. Shahi, said that particular care should be paid when using the term "identity" in order to avoid implying that a person had a single ethnic identity. As a result of transculturation, an individual could have multiple identities and bring those identities into play in different social situations. Excessive emphasis should not be placed on groups to the detriment of the individual and his or her choice of ethnic identity or identities. It was therefore to be hoped

that, in its next report, El Salvador would not feel constrained to concentrate on group phenomena at the expense of evidence relating to the fluidity inherent to transculturation.

24. Mr. ABOUL-NASR, supporting Mr. Banton, said that the Committee should consider how to deal with situations in which the indigenous groups or individuals in a given country did not want to be identified as separate from the rest of the population, and should not press States parties to identify them if for whatever reason they had chosen not to be singled out. Many countries had reported that individuals were free to determine the ethnic or racial group to which they belonged, by expressing their decision in questionnaires, for example.

25. Mr. SHAHI said he had not intended to suggest that the wishes of ethnic groups that did not want to be identified should be disregarded. He had merely requested information on the ethnic groups that visibly and openly, through their dress or language, differed from the rest of the population. The Committee traditionally requested information on the demographic composition of States parties. However, it should decide in which cases it would accept that such information was not required.

26. Mr. WOLFRUM (Country Rapporteur) said that, like the other members of the Committee, he commended the oral presentation by the delegation of El Salvador and the positive attitude it projected.

27. General assessments of El Salvador's compliance with international human rights instruments, as mentioned by Mr. Yutzis, should be encouraged by the Committee on the Elimination of Racial Discrimination. However, the authorities in El Salvador should take the first step and inform the Committee of the progress they considered they had made in their legislative and administrative practices, and in eradicating racial discrimination against individuals.

28. It was gratifying that the delegation had mentioned refugees, such as those from Honduras, who were living in El Salvador. Further information should be included in the ninth periodic report, along with details of the status of foreigners in general.

29. El Salvador would be well advised to seek the technical advice of the Centre for Human Rights on how to gather the necessary information for its next report. The present report manifestly failed to comply with the Committee's reporting guidelines (CERD/C/70/Rev.3). The authorities in El Salvador should therefore do their utmost to submit the information requested to the Committee in 1996, in sufficient time for it to be considered at the forty-ninth session.

30. The CHAIRMAN, speaking in a personal capacity, said that he fully endorsed the comments made by Mr. Wolfrum, the Country Rapporteur, and had been impressed by the delegation's replies to the Committee's questions. However, States parties should heed their obligation to follow the guidelines for the preparation of written reports to be submitted under article 9 of the

Convention. That aside, constructive dialogue had been established and would, it was to be hoped, become a regular feature of the Committee's relations with El Salvador.

31. Mr. MENDOZA (El Salvador) said that the Committee's observations had been duly noted. His Government was keen to further its relations with the Committee and honour its commitments under the Convention, including those relating to the form and contents of periodic reports. Efforts would be made to ensure that the information requested by the Committee was included in the ninth periodic report.

32. The CHAIRMAN said that the Committee had thus concluded the first part of its consideration of the third, fourth, fifth, sixth, seventh and eighth periodic reports of El Salvador (CERD/C/258/Add.1).

33. Mr. Mendoza, Mr. Guerrero, Miss Escobar, Mrs. Alvarado-Overdiek and Miss Chavez (El Salvador) withdrew.

The public part of the meeting rose at 12.25 p.m.